

For the Joint Standing Committee on the Judiciary

March 8, 2012

Re: Guardians ad Litem, Referral from the Government Oversight Committee

From: Chief Justice Leigh I. Saufley

Good afternoon, Senator Hastings, Representative Nass, and distinguished members of the Joint Standing Committee on the Judiciary.

My name is Leigh Ingalls Saufley, I am the Chief Justice of the Maine Supreme Judicial Court, and with me today is the Chief Judge Charlie LaVerdiere of the Maine District Court.

I am honored that you have made time in your very busy schedule to have a conversation regarding the status of Guardian ad Litem oversight.

I am here today, personally, for several reasons. First and foremost, I have great respect for the work of this Committee and for the work of the Government Oversight Committee.

When I received a copy of the memo from Senator Katz and Representative Burns sent to the Judiciary Committee regarding the Guardian ad Litem recommendations previously made by OPEGA, I noted a tone of frustration that, candidly, concerned me.

It is of the utmost importance to me and to the Judicial Branch that the separate branches of government communicate productively regarding the welfare of the people of the State of Maine, particularly when it comes to the well being of families and children.

If there is frustration regarding the lack of resources required to create an oversight committee, I want you to know that I share that frustration.

If the concerns are the result of a misunderstanding regarding the Legislative expectations of the Judicial Branch, I am here to address those concerns as well.

I must begin with one caveat. As you know, neither I, nor any member of the Legislature or OPEGA, can intervene in a matter that is currently pending before a court. The Canons of Judicial Conduct prohibit my involvement, and separation of powers prevents your intervention. Accordingly, our roles in the Judicial Branch and the Legislature require us to look institutionally at how these matters are proceeding. I cannot comment on pending cases, and I trust that you understand.

I recognize that your time is very short today, and I will attempt to address the two separate issues that appear to encompass the spectrum of concerns:

First, the hoped-for **creation of a fully developed complaint process** for Guardians ad Litem, and

Second, the **separate issue regarding the prospect of a program for the support and supervision of Guardians ad Litem.**

CONTEXT

First, I want to give you a little bit of context.

As you know, the name—Guardian ad Litem—is really a bit of a misnomer. In the state courts, GALs are investigators and witnesses in judicial proceedings. Somewhat like a lawyer, they provide a voice for, and on behalf of, children in court proceedings, and, like an expert witness, they investigate and may file a report and give testimony on the result of their investigation.

GALs are not guardians, as in caretakers, custodians, caseworkers, or case managers. They are, in effect, specialized witnesses designed to aid children and the court.

In Maine today, there are 328 rostered Guardians ad Litem.

The numbers from the Family Division may be helpful. In summary, between 12,000 and 13,000 new cases involving children are filed each year (Including Divorce, Paternity, Parental Rights, Child Protection, but not including Protection from Abuse matters). GALs are appointed in 10% or 12% of those cases, between 1,100 and 1,500 each year. The Chief Judge received complaints in 13 or 14 cases a year, approximately 1% of the new appointments.

These numbers are not absolutely perfect because, as you know, our minimal data system, which has not yet received new funding, cannot give us the more detailed statistics that we might hope for.

GALs earn \$50 an hour in Child Protection cases. In Divorce and Parental Rights cases they often work pro bono, but they may also be paid by the parties at varying rates. They have various professional backgrounds, but are primarily licensed as lawyers, psychologists, and social workers or counselors.

Most GALs work effectively in the court system every week.

This does not mean that we minimize the concerns of parents who have had bad experiences.

When it comes to the work of GALs, and the information made available to judges for decisions in family-related cases, **quality is critical.**

INVESTIGATIONS AND COMPLAINTS

That brings us to the procedures that are in place for Complaints about GAL work.

- During the litigation, when a parent is unhappy with the conduct or quality of a GAL's work, there are several options:
 - Obviously, the parent or the attorney for the parent can directly address the concern with the GAL.
 - If that does not create a satisfactory response, there are safeguards in the litigation: The GAL is subject to vigorous cross-examination and challenge. If the GAL has done a superficial or incomplete investigation, or if the guardian has evidenced a bias, that will come out in the cross-examination.
 - And if, ultimately, the parent believes that the trial judge has made a mistake, the decision can be appealed, as of right, to the Law Court.

This part of the process is just as it would be with any witness in a court proceeding, such as a psychologist or social worker.

Where those professionals differ from GALs is that, in addition to challenging their findings and recommendations in court through cross-examination, any person who is concerned about the quality, ethics, or

professionalism of someone like a psychologist, a doctor, or social worker, or a even a real estate appraiser can file a complaint with that professional's independent oversight Board. The Maine Legislature has created those Boards for most professions. A quick review of Title 32 discloses numerous Boards -

- The Board of Social Worker Licensure
- The Board of Examiners of Psychologists
- The Board of Alcohol and Drug Counselors

The Department of Professional and Financial Regulations regularly staffs and supports those Boards.

Looking back, I assume that it is the historical result of the gradual increase in the use of Guardians ad Litem over time that resulted in no Board having been legislatively created for them. That model could certainly be put in place for GALs, but, as was previously addressed by this Committee in June of 2009, it would require resources that do not currently exist.

Another model for a Complaint process can be found in the Board of Overseers of the Bar. That Board oversees 3,857 lawyers practicing in Maine. There are approximately ten times more practicing attorneys in Maine than rostered GALs. (There are another 1,313 lawyers who don't live here but are licensed to practice here who are also overseen by the Board of Overseers.) For a context, the Board of Overseers of the Bar has an operating budget of just less than \$1,000,000 annually (\$945, 426).

In 2009, after addressing multiple recommendations from the Advisory Committee on Children and Families, and OPEGA, including the proposed formation of a GAL Oversight Board, and in consideration of the resource limitations, you asked the courts to continue to provide the Complaint review that had previously been done through the Office of the Chief Judge of the District Court.

Although we would certainly prefer an independent Board process, we have continued to provide the Chief-Judge-review because there is nothing else available now, and we cannot leave distressed parents without at least this review.

To date, no other no-cost or low-cost Complaint system has been identified.

- The Office of the Ombudsman has been ruled out as a possible site for an inexpensive system for review.
- We did talk with the Board of Overseers of the Bar as a potential Oversight body. Because GALs are acting as investigators and witnesses, not lawyers, the Board could not take on that responsibility within its current authority.
- The Maine Guardian ad Litem Institute, a nonprofit professional organization supporting Guardians ad Litem in Maine, has considered creating a better approach than the one we have today, and may still have creative ideas.

I would be grateful for legislative funding for an Independent Board, and until then, I will continue to ask the Chief Judge of the District Court to address the complaints post-adjudication on a case-by-case basis.

SUPERVISION

The Government Oversight Committee has also asked what has happened regarding the recommendation that the Legislature or the Judicial Branch create a program of counseling, support, and feedback for GALs. This issue was also addressed and discussed with this Committee in the 124th Legislature, with no request that the Judicial Branch undertake further costs.

As you know, *Judges* cannot meet ex parte with witnesses, provide feedback on testimony, or suggest better methods of presenting that testimony. The recommendations for those services would have to be put in place, in a different branch of government, through a new administrative system of counselors and supervisors that does not currently exist. The addition of a proposed GAL support program, as designed by the Advisory Committee on Children and Families, is estimated to cost over \$400,000 annually.

In spite of the lack of funding allocated for non-CASA GALs, the Judicial Branch does currently screen, train, and roster GALs. Rules and Standards for GALs have been promulgated and can be found on the court's web site and in the published Rules Books. A handbook for GALs in Child Protection cases has been published and is available on the web Site. GALs are required to receive six hours of training every year. For new GALs and updated training, the District Court leadership has found a way to provide four days of GAL training every biennium, along with a web-based rostering system.

I will be candid with this Committee. The more than \$400,000 funding for the addition of a social services support system for GALs is not funding that we have pursued since we last met with this Committee regarding the OPEGA report in 2009. Our funding focus has been on safety in the courts, and simply finding a way to provide enough judge time to reach all of the cases.

Certainly, if the Legislature determines that a support program for GALs is appropriate, the ACCF has provided a good blueprint for a program that could be placed within the Children's Bureau of DHHS.

THE FUTURE.

The frustrations we all feel with resource limitations do not appear to be getting any better. In the Judicial Branch, we have done what we can do, within existing resources, to provide a complaint process, and we would be grateful for support, fiscal and legislative, to establish an independent oversight body for Guardians ad Litem. If this Committee is interested, we would be pleased to work with you or others to continue the efforts to find a cost-effective complaint system for GALs.

I am honored to have the opportunity to discuss this important topic with you today, and I am grateful for your time this afternoon. I am happy to answer any questions.

GAL and CASA Appointments

In 2010,

There were 709 new Child Protection cases filed.

- GALs or CASA were appointed in every case- **709**.

There were 12,216 new family matter cases involving children filed, including

- 3,407 Divorces with Children,
- 2,110 Parental Rights/paternity cases with Children, and
- 6,330 post-judgment family matters filed

(most are with children, some may not be).

Guardians ad litem were appointed in **833** family matter cases, or 12%.

The Office of the Chief Judge of the District Court received **13** complaints
(13 out of 1,542 GALs = less than 1%).

In 2011,

There were 524 Child Protection cases filed.

- GALs or CASAs were appointed in every case - **524**.

There were 11,874 new family matter cases involving children filed,

- Including 3,417 Divorce with Children'
- 2,258 Parental rights/Paternity cases with children, and
- 6,199 post-judgment cases family matter cases
- (most are with children, some may not be).

Guardians ad Litem were appointed in **673** family matter cases or 10%.

The Office of the Chief Judge received **14** complaints
(14 of 1,197 GALS = 1%).